No. 80-1015

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

WALTER ASCHER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Does the Petition for Writ of Certiorari comply with the requirements of the Supreme Court of the United States, Rule 21?

II. Whether Petitioner acquiesced in the procedure at the hearing before the Committee, whether the claim of denial of the right to cross-examination was not raised by the Petitioner at the hearing or in the Court below, and whether this Court can decide issues raised for the first time in a Petition for Writ of Certiorari?

III. Whether the conclusion and findings of the Character and Fitness Committee were in accordance with law and were not arbitrary?

IV. Whether the Committee's decision and the opinion below of the Illinois Supreme Court are fully supported by the evidence?

V. Whether the authority cited by the Petitioner in support of a due process claim is relevant to the facts of this case?

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, State of Illinois, respectfully prays that the Petition for Writ of Certiorari to the Supreme Court of Illinois be denied.

OPINIONS BELOW

The opinion of the Illinois Supreme Court appears in the Appendix of the Petition for Writ of Certiorari, and is reported at 81 Ill. 2d 473, 411 N.E. 2d 1. The decision

of the Committee on Character and Fitness for the Second Judicial District of Illinois is reproduced in Appendix A of this Brief and has not been published.

JURISDICTION

The petition invokes the jurisdiction of this Court pursuant to 28 U.S.C.A. 1257(3), and the Respondent denies that the jurisdiction of this Court has been properly invoked.

STATUTES INVOLVED

Ill. Rev. Stat. Chapter 38

17-3. Forgery.

§ 17-3. Forgery. (a) A person commits forgery when, with intent to defraud, he knowingly:

(1) Makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority;

Ill. Rev. Stat. Chapter 110

40. Pleadings to be specific.

(2) Every allegation, except allegations of damages, not explicitly denied is admitted, unless the party states in his pleading that he had no

knowledge thereof sufficient to form a belief, and attaches an affidavit of the truth of the statement of want of knowledge, or unless the party has had no opportunity to deny.

Ill. Rev. Stat. Chapter 110A

704. (Supreme Court Rule 704). Qualifications on Examination:

(a) Any person who meets the educational requirements set forth in Rule 703 may make application to the Board of Law Examiners for admission on examination.

(b) Applications shall be in such form as the board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Rule 701, together with proof of his educational qualifications. In the event the proof shall be satisfactory to the board, the applicant shall be admitted to examination.

(c) The Board of Law Examiners shall conduct two examinations annually, one in March and the other in September, or at such other times as the board, in its discretion, may determine. The examinations shall be conducted under the supervision of the board by uniform printed questions. The examination may be upon the following subjects: administrative law; agency; business organizations; commercial paper; conflict of laws; contracts; criminal law and procedure; domestic relations; equity jurisprudence, including trusts and mortgages; evidence; federal and state constitutional law; federal taxation; Illinois procedure; legal ethics; personal property, including sales and bailments; real property; suretyship; torts; and will and administration of estates.

(d) If an applicant fails to pass his first examination, he may be permitted to take successive examinations provided he furnishes the

board with satisfactory evidence of diligent study of the law since his prior examination. An applicant who has been rejected at a fifth examination shall not again be admitted to an examination except upon the permission of the Board of Law Examiners or the Supreme Court. The board or Court so granting the permission may, as a condition to the granting of another examination, prescribe a further course of study.

(e) In the event the Board of Law Examiners shall find that such applicant meets the requirements of these rules, and has received from the Committee on Character and Fitness its certification of good moral character and general fitness to practice law, the board shall certify to the court that such applicant is qualified for admission. Amended eff. Oct. 2, 1972.

Ill. Rev. Stat. Chapter 110A

708. (Supreme Court Rule 708). Committee on Character and Fitness.

(a) At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the Judicial Districts of this state, consisting of not less than three members of the bar. The members of the Board of Law Examiners shall be ex-officio members of the committee.

(b) Before admission to the bar, each applicant shall be passed upon by the committee in his district as to his good moral character and general fitness to practice law. He shall furnish the committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history. Each applicant shall appear before the committee of his district or some member thereof and shall furnish the committee such evidence of his good moral character and general fitness to

practice law as in the opinion of the committee would justify his admission to the bar.

(c) If the committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the bar. If the committee is not of that opinion, it shall file with the Board of Law Examiners a statement that it cannot so certify, together with a report of its findings and conclusions.

(d) An applicant who has availed himself of his full hearing rights before the Committee on Character and Fitness and who deems himself aggrieved by the determination of the committee may, on notice to the committee, petition the Supreme Court for relief. Amended eff. Oct. 2, 1972.

Ill. Rev. Stat. Chapter 110A

709. (Supreme Court Rule 709). Power to make Rules, Conduct Investigations, and Subpoena Witnesses.

(a) Subject to the approval of the Supreme Court, the Board of Law Examiners and the Committee on Character and Fitness shall have the power to make, adopt, and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

(b) The Board of Law Examiners and the Committee on Character and Fitness for each judicial district are hereby respectively constituted bodies of commissioners of this court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for admission to the bar, examinations given by or under the supervision of the Board of Law

Examiners, and the good moral character and general fitness to practice law of applicants for admission. They may call to their assistance in such inquiries and investigations, and take the testimony of witnesses. The hearings before the commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the commissioners, the clerk of the Supreme Court shall issue writs of subpoena ad testificandum, writs of subpoena duces tecum or dedimus potestatem to take depositions. Witnesses shall be sworn by a commissioner or any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the court, if requested. The commissioners shall report to the Supreme Court the failure or refusal of any person to attend and testify in response to a subpoena. Amended eff. Oct. 2, 1972.

STATEMENT OF THE CASE

The Respondent adopts the statement of the case as presented by the Illinois Supreme Court in the opinion below, which appears as the Appendix to the Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I.

THE PETITION FOR WRIT OF CERTIORARI DOES NOT COMPLY WITH THE REQUIREMENTS OF THE SUPREME COURT OF THE UNITED STATES, RULE 21.

Rule 21 of this Court states the requirements for a Petition for Writ of Certiorari. Section 2 of Rule 21 states in part as follows:

> "The clerk shall not accept any Petition for Writ of Certiorari that does not comply with this Rule. . ."

Furthermore, Section 5 of Rule 21 states as follows:

> "The failure of the petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration would be a sufficient reason for denying his petition."

The Petition for Writ of Certiorari failed to comply with several important provisions of Rule 21. Based on these deficiencies, the Petition for Writ of Certiorari should be denied.

Section 1(f) of Rule 21, requires that a petition set out verbatim any constitutional provisions, treaties, statutes, ordinances, and regulations which the case involves. The petition at pages 3, 7, 8, 9, and 17 cites to a Illinois Supreme Court Rule or Illinois Statute. However, the petition fails to set out the text of these rules and statutes as would be required by this Court's Rule 21.

The Petitioner claims "a denial of due process" throughout the petition. The Petitioner fails to state whether he is relying on the Illinois State Constitution

or the United States Constitution or perhaps some other basis for his due process claim. Not only does the petition fail to set out the text of the portion of the Constitution upon which it presumably relies, but it fails even to make an appropriate citation. Such matters clearly violate Rule 21.

Section 1(k)(ii) of Rule 21 of this Court requires that the Appendix to the petition contain:

> "Copies of any other such opinions, orders, findings of fact and conclusions of law rendered by courts or administrative agencies in the case. . ."

A copy of the decision of the Committee on Character and Fitness for the Second Judicial District of Illinois was provided to the attorneys for the Petitioner, nonetheless, the Petitioner failed to include a copy of that decision in the Appendix to his petition. For the convenience of this Court, a copy of this decision can be found in the Appendix to this Brief in Opposition to the Petition.

The above matters clearly violate the express requirements of this Court's Rule 21. The materials left out of the petition are essential to a ready and adequate understanding of the points which the petition claims requires consideration by this Court. On this basis alone, this Court should deny the Petition for Writ of Certiorari.

II.

THE PETITIONER ACQUIESCED IN THE PROCEDURE AT THE HEARING BEFORE THE COMMITTEE; THE CLAIM OF DENIAL OF THE RIGHT TO CROSS-EXAMINATION WAS NOT RAISED BY THE PETITIONER AT THE HEARING OR IN THE COURT BELOW AND THIS COURT CANNOT DECIDE ISSUES RAISED FOR THE FIRST TIME IN A PETITION FOR WRIT OF CERTIORARI.

It is Respondent's position that the Petitioner not only waived his rights to raise the constitutional question of deprivation of due process through lack of cross-examination before this Court by failing to assert that position before the Committee, but that Petitioner was accorded, in fact, essential due process and more at the hearing.

It is well settled constitutional law that failure of counsel to make a timely objection and to invoke the constitutional rights in question at the hearing results in an abandonment of those rights; *Estelle v. Williams*, (1976) 425 U.S. 501 at 508, 48 L. Ed. 2d 126 at 133.

Willner v. Committee on Character and Fitness, (1973) 373 U.S. 96, 10 L. Ed. 2d 224, relied upon by Petitioner (Petition p. 17) is vastly different in its facts from the case at bar. In *Willner*, no hearing or confrontation with adverse witnesses was had. Petitioner in *Willner* had no opportunity to ascertain and contest the basis of the New York Committee's report on him. As the majority opinion in *Willner (supra)* pointed out, the right to cross-examination is only "often" (10 L. Ed. 2d 224 at p. 229) required. There was no statement that it was invariable and universal.

In the case at bar, the hearing was complete, the procedure acquiesced in without objection, and confrontation and cross-examination was supplied by having all

questions desired to be put to the two adverse witnesses at the request of the Applicant asked by the Committee. Surely, Ascher's right to due process was not violated.

At no time during the hearing before the Committee did the Petitioner ever object to being unable to cross-examine personally the only two witnesses Petitioner did not himself present. Petitioner acquiesced in the procedure, which he "did not want to be adversary in nature" (R. 23). Adverse parties were not allowed to examine the Applicant (R. 251-252). And any questions or inquiries Applicant wished put to the adverse witnesses were in fact asked by the Chairman (R. 358).

The testimony of one adverse witness, Heidecke, was disregarded by the Committee in its entirety (Committee Opinion, Appendix p. 10A). The other witness, Brewer, was asked all questions desired by the Petitioner through the Committee. The Opinion of the Committee (Appendix) set forth in detail the reasons for the decision.

The Record fully documents these facts.

Counsel for the Applicant Ascher, Mr. Riley, at the opening of the hearing, unequivocally stated that he understood the procedure and had no objection to the exhibits (R. 8, 10). He understood that this was an inquiry into Mr. Ascher's character (R. 16); that he had both the right to open and close, and the burden of showing that the Applicant does have the proper character and fitness. (R. 16).

It was Mr. Riley who stated (R. 16): ". . . That this is an inquiry, that is not an adversary hearing . . . What you are doing is taking all the evidence, pro and con, on Mr. Ascher's application for a certificate of character and fitness."

When Chairman Fuqua said: "But we are most assuredly not here to resolve the issues of the civil case . . .," Mr. Riley replied (R. 17): "I want to make that perfectly clear. We are not prepared to try the lawsuit . . . There is a meeting of the minds there." Later (R. 23), Mr. Riley stated: ". . . I don't want this to be an adversary hearing, I want everything brought out. You have to meet this man, because he is asking you for a certificate. You have got to meet him, but I don't want to be in the position of adversary."

In the preliminary colloquy, it was agreed between all parties that Mr. Ascher would be allowed to open the hearing with his evidence in view of the fact that he was the Applicant and he was the one seeking admission, and that any testimony in correction or explanation of his testimony would then be heard, and that Mr. Ascher would then be allowed to rebut that, again, in view of the fact that it was his application (R. 25).

Walter Ascher's testimony occupied the Record from Pages 42 through 255. Mr. Riley, his counsel, was allowed to examine him freely. The Committee on Character and Fitness asked questions, to which he made such responses as he chose. The only limitation on Ascher's testimony was the Committee's ruling that the complaining witness, Attorney Culliton, was not allowed to question the Applicant. Certainly, this was in the Applicant's favor and he may not be heard to complain of it (R. 251, 252). The remaining witnesses for the applicant, Winfried Kaczmarek (R. 256-265), John Darianzo (R. 265-310), and June Bernacki (R. 310-327), were directly examined by Mr. Riley and responded to questions put by the Committee without objection by Mr. Riley at any time.

The witnesses who were adverse to the Applicant, Thomas Brewer (R. 327-365) and Bruce Heidecke (R. 366-403), were first examined by the Committee Chairman, Mr. Fuqua. There was no objection from the Applicant. With respect to Mr. Brewer, Mr. Riley began to object to Brewer's reading from some notes and the witness put the notes away (R. 338). The remaining members of the Committee then questioned the witness (R. 347 ff.).

At Mr. Riley's request (R. 538): "I would like to have you refer, Mr. Chairman, to this exhibit here and ask the witness what he meant about the clear title he was promised on July 6th. 'I have waited three months.' That is the only area we are concerned with."

The Committee then examined, on this suggested line of inquiry by Mr. Riley, for a considerable length of time (R. 358-361).

This was all done without objection from Mr. Riley. Mr. Riley, in addition, was given permission to submit anything to the Committee that he would like to address to the Committee in writing and he asked, and was granted permission, to submit a layout of the offices and pictures at the combined law office and realtor's office at 603 Addison (R. 365).

The last witness was a Bruce Heidecke, an attorney. Mr. Riley was allowed to object to this witness's testimony (R. 370). The Committee did not deem the finding of facts with reference to Heidecke's testimony necessary to its determination of the matter (Committee Opinion, Finding 35, Appendix p. 9A). When the witness testified, in substance, that Mr. Ascher was at a real estate closing representing a Mr. and Mrs. Garza, Mr. Riley was allowed to break in and directly question his own client, Mr. Ascher (R. 373):

"The Witness: . . . Mr. Ascher, was there representing Louis and Sanjuanita Garza, G-a-r-z-a.
Mr. Riley: Were you?
Mr. Ascher: No."

Mr. Riley then secured the permission of the Committee to order any portion of the transcript for his own use (R. 374). When the witness sought to tell what happened at this closing, Mr. Riley objected (R. 377); hence, the matter was postponed on the motion of the Committee (R. 378-379) and the matter was never reached. Mr. Riley did not even seek to address a question to the witness through the Chairman (R. 393), merely asking for a copy of all Mr. Heidecke's testimony (R. 393-394): "We would want to get a copy of it because we would want the opportunity to meet it."

Mr. Riley then explicitly stated:

> "Also, inasmuch as we are not going to settle this thing until we get Mr. Heidecke's problems out of the way, I have no objection to that file with the hearsay of somebody saying Mr. Ascher practiced law without a license. That is relevant now. It's out in the open . . . So I would like to have that file in the possession of the Committee, . . ." (R. 394).
>
> "I want that introduced into evidence now. I don't want any oral testimony independent of that. . . . I am referring to his file, the file that he is reading from. He was reading from this file all the time he was attempting to testify about this practicing without a license." (R. 395)
>
> "I have no objection to a hearing on this matter as long as we are given complete disclosure of what we are to meet." (R. 397).

Later, the witness admitted that he was just assuming that he, Ascher, was the lawyer (R. 399), and when Chairman Fuqua asked (R. 400): "Now, Mr. Riley, is there anything that you wish me to pursue along that line of questioning?" Mr. Riley responded (R. 400-401):

> "No, Mr. Chairman, there is not. All I want is time now and a date . . . for us to meet these two issues: . . . that Mr. Ascher didn't tell the truth under oath; and, furthermore, the circumstances of whether he did or did not appear at this closing and what he did or did not do in what capacity. We would like that, because in the present state of where we are now with Mr. Ascher's application, we must answer these allegations."

The Chairman, Mr. Fuqua, agreed with Mr. Riley and suggested an alternative of an affidavit from the Applicant Ascher, or another meeting with the Committee to hear Ascher say it, or ". . . do you think there is some other way that you could present it to us . . .?" (R. 401).

Mr. Riley requested permission to gather his material together, make his decision, and transmit the material to the Committee.

It is thus clear from the record without contradiction, that Ascher at no time objected to the Committee's procedure, that at no time did the Committee's procedure preclude Ascher, through his counsel, from asking any questions through the Chairman that he cared to ask, and that he was allowed a full and complete opportunity to address questions to the two adverse witnesses through the Chairman. At no time did Petitioner ever object to the proceeding or to any supposed lack of cross-examination rights.

At pages 16 and 17 of the Petition at attempt is made to raise an issue concerning the right to cross-examine. This Court will note that this claim was not decided, addressed, or even mentioned by the opinion below of the Illinois Supreme Court. The reason for this is simply that the Petitioner failed to claim a denial of a right to cross-examination in his Petition to be Admitted to

Practice, Memorandum of Law in Support of Petition, Reply Brief, and Petition for Re-hearing, all of which were addressed to the Illinois Supreme Court. It is the clear and unequivocal policy of this Court that it will not decide issues raised for the first time in a Petition for Writ of Certiorari.

This policy has been recently affirmed in the case of *Tacon v. Arizona*, (1973) 410 U.S. 351, 35 L. Ed. 2d 346. In this case, the primary legal issues concerned a state's power to try a criminal defendant in absentia. In dismissing the Writ of Certiorari as improvidently granted, this court stated:

> "Upon reviewing the record, however, it appears that these broad questions were not raised by the Petitioner below nor passed upon by the Arizona Supreme Court. We cannot decide issues raised for the first time here." (410 U.S. 351 at 352, 35 L. Ed. 2d 346 at 348.)

There is no issue concerning the Petitioner's right to cross-examination properly before this Court. The Petition for Writ of Certiorari should be denied.

III.

THE CONCLUSIONS AND FINDINGS OF THE CHARACTER AND FITNESS COMMITTEE WERE IN ACCORDANCE WITH LAW AND WERE NOT ARBITRARY.

Although it is at best unclear what exactly the nature of the Petitioner's claim is in this regard, apparently, the Petitioner is claiming that the conclusions of the Character and Fitness Committee were "subjective" and, therefore, defective in some way.

This Court has long recognized the unique nature of the character and fitness requirement of applicants to the practice of law.

In one such case, the New York state standard that applicants must possess the "character and general fitness requisite for an attorney and counselor at law" was challenged as being vague and overbroad: *Law Students Research Council v. Wadmond* (1971), 401 U.S. 154, 27 L. Ed. 2d 749. In upholding this standard, this court stated as follows:

> "Long usage in New York and elsewhere has given well defined contours to this requirement, which the appellees have construed narrowly as encompassing no more than 'dishonorable conduct relevant to the legal profession.'" (401 U.S. 154 at 159, 27 L. Ed. 2d 749 at 746).

Mr. Justice Frankfurter once stated concerning this matter that:

> "No doubt satisfaction of the requirement of moral character involved an exercise of delicate judgment on the part of those who reach a conclusion, having heard and seen the applicants for admission, a judgment of which it may be said as it was of many honest and sensible judgments in a different context that it expresses an intuition of experience which outruns analysis and sums up many unnamed intangled impressions; impressions which may lie beneath consciousness without losing their worth. (Citation omitted). Especially in this realm, it is not our business to substitute our judgment for the state's judgment—for it is the state in all the *panoply* of its powers that is under review when the action of their supreme court is under review." (Concurring opinion in *Schware v. Board of Bar Examiners* (1957) 353 U.S. 232 at 248, 1 L. Ed. 2d 796 at 807).

This Court has thus acknowledged the difficult task which State Character and Fitness Committees are faced with when reviewing applicants for admission to the practice of law. At page 16 of the Petition it is

claimed that a conclusion of "inexcusable conduct" is for some unknown reason too subjective to support the Committee's and the Illinois Supreme Court's decisions. With this Court having expressly found that the conclusion of "dishonorable conduct relevant to the legal profession" was constitutionally valid, the argument that the conclusion of "inexcusable conduct" is somehow constitutionally defective loses all credibility.

While the Petition is not clear on this point, there appears to be some claim to the effect that the Committee was required to press specific charges against the Petitioner and then make a finding of a violation of morals or of law. The only case cited by the Petitioner on this point concerned the rights of an attorney in disbarment proceedings (Petition at pp. 22-23). This case is not relevant to the issues before this Court.

The relevant case law on this issue is properly stated as follows:

> "Admission cases are not governed by the same rule as disciplinary action against attorneys, where definite charges are lodged. Under our rule the committee is charged with the duty of inquiry and investigation, not preferring charges, in granting certificates only to such personnel as are fit, by good character and morals, to be admitted to the practice of law." (*In re Latimer* (1957) 11 Ill. 2d 327 at 332, *cert. denied*, 355 U.S. 82, as quoted in, *In re Martin-Trigona* (1973) 55 Ill. 2d 301 at 311, *cert. denied* 417 U.S. 909).

Respondent acknowledges that these two cases are Illinois Supreme Court cases. It should not go unnoticed that this Court denied certiorari in both of those cases, as should be done in the case at hand.

IV.

THE COMMITTEE'S DECISION AND THE OPINION BELOW OF THE ILLINOIS SUPREME COURT ARE FULLY SUPPORTED BY THE EVIDENCE.

The Petitioner apparently claims a denial of due process on the basis that the decision of the Character and Fitness Committee and the opinion of the Illinois Supreme Court were not supported by the evidence. Before addressing the lack of merit of this claim, one important factor should be noted. This Court has found that where there is no federal question properly before this Court, as is the case here, and the remaining issue is merely factual, then certiorari should be denied.

In *Tacon v. Arizona (supra)* this Court determined that it could not hear the Petitioner's legal claim since it had not been raised in the state court below and then refused to hear any claim concerning a voluntary waiver of the Petitioner's right because:

> "Since this is primarily a factual issue which does not, by itself, justify the exercise of our certiorari jurisdiction, the Writ of Certiorari is dismissed as improvidently granted." (410 U.S. 351 at 352, 35 L. Ed. 2d 346 at 348).

Therefore, without even addressing the lack of merit of the Petitioner's factual claim, it is clear that the lack of a viable federal question properly before this Court justifies a denial of the Petition for Writ of Certiorari.

Nonetheless, a brief discussion of the findings and the evidence which support the denial of the Petitioner's application to practice law is in order.

On May 31st, 1979, a hearing was had before the entire membership of the Character and Fitness Committee for the Second Judicial District of Illinois. At that time, both the Committee and the Applicant were

represented by counsel. The Committee heard the testimony of the Applicant, now the Petitioner, and of five other witnesses. The Committee further received into evidence 13 exhibits on behalf of the Committee and 26 exhibits on behalf of the Applicant. Following the hearing, the Applicant submitted and the Committee received ten further exhibits.

The Committee made 35 specific findings of fact based upon the evidence. The full text of these findings are found in the Committee's decision in the Appendix to this Brief. A summary of the highlights of these findings follows:

The Applicant is an accountant and real estate broker. His net worth is in excess of $800,000.00. The Applicant testified that he was the business manager of an operation called, "Addison Legal Services." One of the Applicant's exhibits further showed that the Applicant was a part-owner of this business. The Applicant maintained a single telephone service for his real estate office, his accounting office, and the Addison Legal Service.

In one real estate transaction during the end of 1977, the Applicant, or his business associates, forged the signature of the buyer on various documents. In another real estate transaction, which closed in July of 1978, a trust in which the Applicant was a named beneficiary, was the purported seller. Yet, the trust never had any interest in the property. In the same transaction, the Applicant presented the buyer with a Report of Title in which a first mortgage had been deleted by the process of covering that disclosure with a piece of paper and photocopying the Report of Title. The Applicant had the incredible explanation for this when he testified that he presented the buyer with a photocopy of the Title Report

so that the buyer would know what it would look like *after* the mortgage had been paid. Also regarding this transaction, the Applicant prepared the Affidavit of Title and the Deed and signed the names of the owners of the property to the affidavit, although he had no written authorization to do so. The distribution of funds from this transaction revealed that the Applicant had the right to write checks upon the Addison Legal Services Escrow Account. The buyer testified that the closing on this transaction was handled exclusively by the Applicant. The buyer further testified that it was his assumption that the Applicant was a lawyer and for that reason the buyer did not hire a lawyer to represent himself.

As a result of some of the Applicant's prior real estate transactions, on November 2nd, 1976, a civil suit (Alloy Piping suit) was filed against the Applicant. The complaint alleged that the Applicant had breached a fiduciary relationship, and had committed various frauds against the plaintiff, who had been a client of the Applicant regarding tax accounting and real estate deals. The complaint requested injunctive relief, actual and punitive damages, and a declaration holding the Applicant in contempt of court for the unauthorized practice of law. When the Applicant filled out his questionnaire, which was to be submitted to the Character and Fitness Committee regarding his application to practice law in February of 1979, he failed to mention this lawsuit. His only excuse was that he thought he had already furnished the information in a prior questionnaire. However, this would have been impossible since the prior questionnaires had been given to the Committee prior to the filing of the lawsuit.

Based upon these findings and the evidence presented, the Committee in its decision listed six specific conclusions. A brief summary of these conclusions follows:

Regarding the nondisclosure of the litigation, the Committee concluded:

> "The nature of the charges and the Alloy Piping litigation are such that Mr. Ascher must have known that the charges would seriously reflect upon his character. The Committee can not accept the suggestion that it was his best recollection that he had disclosed the lawsuit in prior documents."

The Committee further concluded that the handling of the various real estate deals by the Applicant had been "improper," and that in two cases the Applicant's actions were "unconscionable and indicates to the Committee a serious defect in the character of the Applicant, rendering him unfit to practice law in Illinois."

The Committee further concluded that the Applicant's dealings with the Addison Legal Service were "simply a subterfuge to permit Ascher to practice law without a license."

It was on the basis of the evidence presented at the hearing, upon the findings and conclusions reached by the Committee, that the Committee by a vote of six to zero (6 to 0) denied the Applicant's application for a certificate of character and fitness.

The opinion below of the Illinois Supreme Court upon review of the record and the Committee's decision found ample evidence to support the Committee's decision. Specifically, the opinion below found three factual bases to support the denial of the Petitioner's application to practice law.

First, the opinion below notes the Petitioner's failure to disclose the pending lawsuit in his questionnaire filed with the Committee. In regards to this matter, the opinion below stated:

> "Petitioner has attempted to explain his false response by claiming that he believes the lawsuit had been reported on an earlier form. The Committee obviously did not believe that explanation, and the members' disbelief certainly can not be said to be contrary to the manifest weight of the evidence. The credibility of Petitioner's explanation is further strained by the fact that he stated in his sworn petition filed with this Court that the Alloy suit 'wasn't of such legal and applicable concern that it would inevitably impress one's consciousness, to the necessity of suppression.' This assertion that the charges of forgery and fraud, contained in the complaint by Alloy, were not such as to cause serious concern regarding Petitioner's moral character simply emphasized this Petitioner's insensitivity to the improprieties and irregularities evidenced by his earlier conduct. Like the record in this case, Petitioner's explanation demonstrates the existence of fundamental questions regarding Petitioner's capacity to make those ethical judgments required of an attorney in the course of his practice and performance of his fiduciary responsibility." (Appendix to Petition for Writ of Certiorari, p. 15a).

Regarding the signatures forged by the Applicant in the instances where names were signed without written authorization the opinion below stated:

> "Leaving aside the matter of the deeds, the gross impropriety in the execution and notarization of the affidavits is obvious even to the untrained mind. In neither case, apparently, was this procedure known to the other concerned parties." (Appendix to Petition for Writ of Certiorari, at p. 16a).

Finally, the opinion below noted that during oral argument of the case before the Illinois Supreme Court, counsel for the Committee noted two other misrepresentations in Petitioner's supplemental questionnaire.

One, the Petitioner failed to disclose that he had ever worked in a law office or had otherwise been employed by a lawyer, despite the fact that he was the registered owner of the Addison Legal Services and had been serving as its business manager. And two, the Petitioner had answered "No" on both questionnaires to the question as to whether the Petitioner had ever been "accused by any employer, superior, associate, customer, or other person, of dishonesty in connection with any employment or occupation" even though the pending lawsuit charged the Petitioner with gross misconduct, including fraud and forgery regarding a relationship with a client.

The Court concluded by noting that the Petitioner's apparent position was that the seller of the property in the pending lawsuit eventually was paid what was due him. In response to this position, the opinion below stated:

> "But the character and fitness requirements of the legal profession are not met simply by ultimately delivering that which was wrongfully withheld originally. The integrity of our profession can be no greater than that of its members, and we protect neither our profession nor the public when we admit to the profession those who have demonstrated the insensitivity to its standards which is evident here." (Appendix to Petition for Writ of Certiorari at pp. 16a-17a).

Clearly, an examination of the decision of the Character and Fitness Committee and of the opinion below of the Illinois Supreme Court shows that there is

substantial evidence which supports the denial of the Petitioner's application to practice law. The Petitioner was not denied any due process rights. The Petition for Writ of Certiorari should be denied.

V.

THE AUTHORITY CITED BY THE PETITIONER IN SUPPORT OF A DUE PROCESS CLAIM IS NOT RELEVANT TO THE FACTS OF THIS CASE.

The Petition inexplicably places principal reliance on two cases decided during the "Red scare" of the 1950's. In a nutshell, these two cases stand for the simple proposition that one may not be denied admission to the practice of law solely on the basis of past membership in the Communist Party. In the case at bar, admission was denied because personal actions of the Petitioner *himself* revealed that he did not have the requisite moral character and fitness.

A more detailed analysis of the two cases relied upon reveals just how misplaced the Petitioner's reliance on these cases really is.

At page 20 of his Petition, the Petitioner states that:

> "The issue here is much similar to that in *Konigsberg v. State Bar*, 353 U.S. 252."

The only similarity between *Konigsberg* and the present case is that both concern a petitioner who was denied application to the practice of law.

At the outset of the *Konigsberg* opinion, this Court noted that:

> "There is no criticism in the record of his (Petitioner) professional work." (353 U.S. 252 at 266, 1 L. Ed. 2d 810 at 820).

This Court later noted that:

> ". . . not a single person testified that Konigsberg's moral character was bad or questionable in any way." (353 U.S. 252 at 265, 1 L. Ed. 2d 810 at 821).

Surely, the record presented to the court in *Konigsberg* is in no way similar to that which would be presented to the Court in this Petitioner's case. In this case, several witnesses testified to the Character and Fitness Committee regarding the Petitioner's improper conduct and dealings in regard to the Petitioner's profession as an accountant and real estate agent. Simply put—if Petitioner acted as he did in those professions, it was reasonable to infer he would act that way as a lawyer. But there is more: Petitioner *concealed* the lawsuit from the Committee, whatever its merits. He thus undermined the entire assessment of character process. Petitioner's suggestion (Petition p. 14) that "calmer minds . . . would have at least kept the failure to disclose the pending civil litigation to the level of civil litigation" is incredible. It also reveals Petitioner's indifference to or ignorance of the standards of the legal profession.

The real question faced by this Court presently is similar to that faced by the Court in *Konigsberg*. In *Konigsberg*, this Court stated:

> ". . . the question is whether on the whole record a reasonable man could fairly find that there were substantial doubts about Konigsberg's honesty, fairness, and respect for the rights of others and for the laws of the state and nation." (353 U.S. 252 at 264, 1 L. Ed. 2d 810 at 820).

With the question framed in this manner, there can be no doubt whatsoever that the Petitioner in the instant case was properly denied his application to the practice of law.

The Petition also mysteriously finds great similarity between this case and the case of *Schware v. Board of Bar Examiners*, (1957) 353 U.S. 232, 1 L. Ed. 2d 796. In *Schware*, this Court noted that:

> "He (Petitioner) demonstrated candor by informing the board of his personal history and by going to the dean of the law school and disclosing his past. The undisputed evidence in the record shows Schware to be a man of high ideals with a deep sense of social justice. Not a single witness testified he was not a man of good character." (353 U.S. 232 at 240, 1 L. Ed. 2d 796 at 802).

Once again, it must be mentioned that the facts of *Schware*, as mentioned above, are not at all similar to the facts presented by this case.

As in *Konigsberg*, this Court noted that the denial of the petitioner's application to practice law was based primarily on the petitioner's involvement with the Communist Party. This Court then held that membership in the Communist Party cannot be the basis for an inference of bad moral character. (353 U.S. 232 at 247, 1 L. Ed. 2d 796 at 806).

The cases relied upon by the Petitioner are not relevant to the facts and issues of this case. The Petition for Writ of Certiorari should be denied.

CONCLUSION

The form and content of the Petition for Writ of Certiorari fails to comply with this Court's Rule 21. This failure alone is sufficient reason to deny the petition.

There is no federal question properly before this Court for review. The alleged denial of the right to cross-examine was not raised in the Illinois Supreme Court and may not be considered for the first time before this Court. The procedure followed by the Character and Fitness Committee was in accordance with the law. The decision of the Character and Fitness Committee and of the Illinois Supreme Court is in accordance with the law and is supported by the evidence. There is no Federal question properly before this Court for review.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

Decision of the Committee on Character and Fitness for the Second Judicial District of Illinois

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IN THE MATTER OF THE APPLICATION OF
WALTER ANTHONY ASCHER
TO BE ADMITTED TO THE
BAR OF ILLINOIS ON EXAMINATION.

The application of Walter Anthony Ascher was first reviewed by John R. MacKay, a member of the Character and Fitness Committee for the Second Judicial District. Because of apparent problems in this application Mr. MacKay called for a hearing before the entire committee and on May 31, 1979, commencing at 9:00 o'clock A.M. and continuing throughout the day a hearing was conducted. The hearing took place in the Offices of the Appellate Court of the State of Illinois Second District in the Appellate Court Building. Present on behalf of the committee were: Joseph A. Donovan, Stephen A. Ellis, Ellis E. Fuqua, Donald J. Hennessy, John R. MacKay and Ben Rifkin. Mr. Fuqua was chosen as Chairman of the meeting. Also present were: Mr. Ascher and his wife Erika Ascher, Mr. Francis X. Riley and Mrs. Phyllis Gurber, attorneys for Mr. Ascher, and Mr. Stephen J. Culliton. The committee heard the testimony of Mr. Ascher, Winfried Kaczmarek, John Darianzo, June Bernacki, Thomas Brewer, Sr. and Bruce Heidecke. During the course of the hearing Committee's Exhibits 1 through 13, inclusive, and Applicant's Exhibits 1 through 26, inclusive, were received.

Following the hearing the applicant submitted additional exhibits designated as Applicant's Exhibits 27 through 37, inclusive, and these were made known to the committee members by means of correspondence from the chairman of the committee.

The committee first received Committee's Exhibits 1 through 6, inclusive, from which it became apparent that Ascher first filed his questionnaire and statement in November of 1977. He took the February 1978 Illinois Bar Examination and failed it. He likewise took and failed the July 1978 examination, and then passed the February 1979 examination. He filed an additional questionnaire which indicated among other things that there had been "no change" as to whether or not he had ever been a party in any civil or criminal proceeding. An objection was filed in Mr. Ascher's application arising out of the case of *Alloy Piping, Inc. v. Walter Ascher and Village Center Realty and Winfried and Mildred Kaczmarek*, DuPage County Circuit Court No. 78 CH 483, containing serious charges against Ascher involving his integrity.

It was stated by the chairman that the committee was interested in the issues as to why the lawsuit was omitted in the additional questionnaire and Mr. Ascher's conduct in the matter in whatever capacity he was acting and whether or not he purported to act as a lawyer while not licensed.

After discussion among the committee and having heard the suggestions of interested parties it was decided by the committee that witnesses would be excluded although Mr. Ascher and his attorneys and Mrs. Ascher would remain and that Attorney Culliton would remain in the hearing.

After hearing the testimony of the witnesses and having examined the exhibits the committee finds, as follows:

1. The applicant is an accountant and real estate broker. His real estate business is incorporated and known as Village Center Realty Incorporated with its Principal place of business in Addison, Illinois. Ascher is a licensed real estate broker. He is licensed as an enrolled agent with the Internal Revenue Service and is a licensed insurance agent and broker.

2. He owns various properties and indicates that he has a net worth in excess of $800,000.00.

3. Ascher is not a member of any state bar at the present time. He made an application to take the Georgia bar examination but did not take it because of some question concerning Lewis College at Law.

4. Ascher testified that Addison Legal Services was registered under the Name Statute with himself as business manager and John Darianzo as attorney. Applicant's Exhibit 33, however, shows that as of November 1, 1978, Addison Legal Services was certified as being owned by Walter Ascher with John A. Darianzo transacting business.

5. One telephone service is maintained for Ascher's real estate office, for his accounting office, and the law office occupied by Mr. Darianzo. Darianzo has been associated in the same building with the same telephone number since 1976. John Cunningham and Phillip Wood are attorneys who have been admitted to practice since April 1978. They are presently associated with the Legal Service.

6. Mr. Darianzo testified that up until three months before the hearing the name of Addison Legal Service was nowhere to be found and that prior to that time he practiced under his own name. He said that Cunningham and Wood came in to the Addison Legal Services about the same time.

7. Darianzo said that he did not have any stationery showing Mr. Cunningham or Mr. Wood to be associated with Addison Legal Services. He said that Cunningham has an office building in Aurora and both he and Wood spend their time in Aurora.

8. With reference to the office equipment Mr. Darianzo testified that he owned two of the desks and states that the other two desks as well as the two typewriters and the legal library were owned by Ascher.

9. Applicant's Exhibit No. 1 is a plat of survey of property at Wood Dale. The survey covers a total of twelve acres and is divided into four parcels.

10. In his capacity as a real estate broker Ascher took a listing on Lot 3 from the owners, Mr. and Mrs. Bernacki. In September or October of 1977 Bernackis contracted to sell Lot 3. The purchasers were either Ascher and Kaczmarek or Ascher and Darianzo. The sales price was for $150,000.00 less a real estate commission of $10,000.00.

11. In the closing statement in which Bernacki was the seller of Lot 3 dated April 12, 1978, the purported buyers were W. Ascher and J. Darianzo, the purchase price shown as $150,000.00 and there is a buyers' credit for $10,000.00 real estate commission. With reference to that document Mr. Ascher testified that what it really amounted to was that "We agreed to purchase it at $140,000.00 net". He described we as being himself and Mr. Kaczmarek and he stated that Mr. Darianzo signed for Mr. Kaczmarek but had no personal interest in it. Mr. Ascher testified that if Mr. Bernacki were to ask him for the commission he would give it back to him.

12. During the fall of 1977 Ascher and Kaczmarek were planning to acquire all of the property and to resubdivide it for a manufacturing development, but in January and February of 1978 they reached the conclusion that this project would be too expensive, and they elected to sell.

13. In February of 1978 Sollitt Construction Company entered into a contract for the purchase of Lot 3 for $170,000.00. The closing statement dated in April of 1978 shows John Darianzo as seller although he had no interest in the property. The closing statement shows brokers' commissions to Village Center Realty in the amount of $8,500.00 and to Gladstone Realty in the amount of $6,500.00.

14. With reference to Lot 4, Ascher took a listing from the owners, Mr. and Mrs. Freston, and in September of 1977 Kaczmarek purportedly entered into a contract to purchase Lot 4 from Freston. Apparently towards the end of 1977 it was agreed that Ascher would participate with him as to Lot 4. As between

Freston and Kaczmarek, there were four contract documents, a contract dated September 16, 1977, a rider dated December 16, 1977, a contract dated April 22, 1978, and a rider also dated April 22, 1978. In each document, the signature of Winfried Kaczmarek is a forgery. The actual signers were either Ascher or Darianzo.

15. Among Mr. Ascher's accounting clients were Mr. and Mrs. Bernacki and also Alloy Piping Company. Mr. Thomas Brewer, Sr. is Vice President of Alloy Piping and while picking up his tax return at Ascher's office he learned about the Wood Dale properties.

16. Ascher participated as the broker in the sale of Lot 2 to Brewer, and there was also a contract entered into involving the sale of Lot 4 from Ascher as beneficiary of Bank of Lyons Trust 1737 to Alloy Piping, Inc. at a sales price of $120,000.00. Lot 4 was, however, never owned by Trust 1737.

17. In May of 1978 the closing of Lot 4 between Mr. and Mrs. Freston as Sellers and Mr. and Mrs. Kaczmarek as Purchasers took place. The closing statement indicates the purchase price was $100,000.00, including a purchase money mortgage of $75,000.00. The real estate commission was $10,000.00,

18. Exhibit D to the complaint filed by Alloy Piping is the $75,000.00 mortgage purporting to be signed by Mr. and Mrs. Kaczmarek. Mr. Ascher testified that Mr. Darianzo signed the Kaczmareks' names. Mrs. Ascher notarized the signature.

19. With reference to the transaction between Kaczmarek and Alloy Piping or Brewer, it appears that Ascher's Trust 1737 never had any interest in the property, and when the transaction was closed on July 6, 1978, Ascher presented Brewer with a report of title issued by the Chicago Title Insurance Company in which the First Mortgage in the amount of $75,000.00 had been deleted by the process of covering the disclosure with a piece of paper and photocopying the report of title. The closing statement purports to be

between Mr. and Mrs. Kaczmarek as Sellers and Thomas Brewer, Sr. as Buyer. It states that it was prepared by Walter Ascher and the testimony is that the signatures of Mr. and Mrs. Kaczmarek on the closing statement were in fact signed by Walter Ascher. There is no reference in the closing statement to the $75,000.00 purchase money mortgage, and Brewer did pay the full amount of the purchase price in cash. Ascher testified that at the closing he disclosed the existence of the mortgage to Mr. Brewer and promised that he would remove it. He says that he presented him with a photocopy of the title report so that Mr. Brewer would know what it looked like after the mortgage was paid.

20. In addition to the closing statement, Ascher prepared the affidavit of title and the deed. He signed the names of Winfried and Mildred Kaczmarek to the affidavit. The Notary Public was one Trinity Bianco who works for Ascher in his accounting office. The warranty deed, purporting to bear the signatures of Mr. and Mrs. Kaczmarek was in fact signed by Ascher and notarized by John Darianzo. Darianzo signed Winfried Kaczmarek's name to the Plat Act Affidavit and then acted as Notary Public for the same document.

21. The funds that were made payable at the closing were deposited into Ascher Accounting. Ascher then prepared a settlement between Kaczmarek and himself, and he testified that on or about July 13th he deposited the balance of the funds into John Darianzo's Escrow Account, however, the evidence shows that the actual transfers were by two checks, Exhibits 14 and 15. Exhibit 14 was a check dated July 19, 1978, from Ascher Accounting to Addison Legal Service Escrow Account in the amount of $38,631.00. Exhibit 15 was the check from Ascher Accounting to Addison Legal Services Escrow in the amount of $35,000.00 and was dated October 13, 1978. Mr. Ascher had the right to write checks upon Addison Legal Services Escrow Account when co-signed by Darianzo or the secretary, Donnia Didier, or by Mrs. Ascher.

22. Darianzo testified that at the closing of the sale to Brewer the mortgage was deleted from the title opinion by placing something over that portion of the title opinion and running it through a photocopier. It was his recollection that one of the secretaries did the photocopy. Mr. Ascher told Mr. Brewer that the mortgage would be removed subsequent to the closing date. Mr. Darianzo testified that it was his understanding that the mortgage was going to be placed on another piece of property owned by Ascher.

22. Ascher went to Europe on vacation at the end of July 1978. While he was gone Mr. Brewer indicated that he was extremely upset because he had not received the deed. The first deed was alleged to have been lost in the mail and also was apparently defective. Brewer indicated that he was also upset about the transaction because he had learned about the $75,000.00 mortgage.

23. Darianzo prepared a second deed, signed the Kaczmareks' signature to it and notarized the signatures but did not disclose these facts to Brewer.

24. He tried to excuse his signing the Kaczmareks' signatures to the deed and failing to use his own name or a power of attorney on the basis that he was being badgered by Tom Brewer, Jr. and that it would not have been possible to record the deed without recording a written power of attorney which he did not have. He said that at the time he signed Kaczmareks' signatures they lived in Rockford, Illinois, and that it would have been possible for him to go out there and for the Kaczmareks to sign the $75,000.00 mortgage and note and the deeds instead of his signing their names to them. He said "Sometimes you make a value judgment on the clients you are dealing with."

25. There is a power of attorney purporting to bear the signatures of Mr. and Mrs. Kaczmarek. It is dated November 27, 1977, and notarized April 9, 1979. Ascher testified that he had a verbal power of attorney from Mr. Kaczmarek and later obtained a written power of attorney retroactive to the date when he first got involved.

26. Mr. Kaczmarek testified before the committee that he told John Darianzo to sign his name or to have Mr. Ascher sign his name. He testified Mr. Ascher had a verbal power of attorney from him.

27. John Darianzo testified that he signed Mr. Kaczmarek's and Mr. Kaczmarek's wife's name to documents, a deed, and a trust deed, and that he had Mr. Kaczmarek's verbal authority to do so. He acknowledged that he also signed and notarized the Plat Act Affidavit using the name of Winfried Kaczmarek. He stated that he did so on verbal authorization given him by Mr. Kaczmarek.

28. Darianzo testified that the first time he had any authority for Mr. Kaczmarek to sign his name was in August 1978 and he said that it was sometime after July 6, 1978 that Mr. Brewer, Jr. started to pressure him. He admitted that he had never talked to Mrs. Kaczmarek and he never laid eyes on her or talked to her on the telephone. He then admitted that he signed the names of Mr. and Mrs. Kaczmarek to the mortgage papers on May 22, 1978.

29. Darianzo said that it was his feeling that with a power of attorney it would be proper to sign an affidavit of title for someone.

30. Ascher was advised by Freston that they were concerned because they had been advised by Mr. Brewer that he had purchased their property. Freston said that he didn't want anything except for the mortgage to be paid off. The mortgage was paid off on January 12, 1979. Ascher testified that Freston did not want to receive his money until 1979.

31. Thomas Brewer, Sr. testified against the applicant. He signed the complaint filed by Alloy against Mr. Ascher and testified that all the statements in the complaint are true. He denies that anything was said to him about a mortgage against Lot 4 at the closing, and his first information was when he heard about it from the Bank of Elk Grove on July 28th. He was given a copy of the title commitment, but there was nothing on it about

a mortgage, and the title commitment was not changed in his presence. He testified that the closing on July 6th or July 7th took 15 minutes to one-half hour and that it was handled exclusively by Mr. Ascher. Brewer testified that it was his assumption that Ascher was a lawyer and for that reason he did not hire a lawyer to represent himself or Alloy. He considered Ascher a friend and was relying on that friendship.

32. In the litigation filed by Alloy, the answer is signed by Phil Wood with the initials (WA). Mr. Ascher testified that he signed the name Phil Wood. Mr. Ascher testified that he and Mr. Wood went over the complaint in preparation for filing the answer, but they did not have enough time to have the answer typed up. Mr. Wood was in court and Mr. Ascher called on the telephone and read the answer to him, and Mr. Wood said, "See if you can get it filed", and Mr. Ascher took it to the court house in Wheaton and filed the answer.

33. Ascher testified that when he filled out the questionnaire in February of 1979 to the effect that there were no changes with respect to lawsuits since his original application that he thought he had already furnished the information in questionnaires furnished with the July 1978 bar exam or at the time of his application in November of 1978 to write the February 1979 bar exam.

34. June Bernacki testified that she had no complaints about the way Mr. Ascher handled any work that he did for her and her ex-husband.

35. Attorney Bruce Heidecke testified over the objection of the applicant. Mr. Heidecke was the Attorney for the Frestons and testified to his conversation with Mr. Brewer when Brewer discovered the existence of the mortgage. Mr. Heidecke testified as to discrepancies between Ascher's testimany on a discovery deposition in the Alloy Piping case and his own recollection of the same facts, and he also testified that Ascher had acted as his attorney in a real estate closing in behalf of a family named Garza.

His testimony was challenged factually by Ascher, and the committee does not deem the finding of facts with reference to Mr. Heidecke's testimony necessary for its determination in this matter.

CONCLUSIONS

It is the opinion of the committee, after hearing all of the evidence, and after examining all of the exhibits, that the conduct of Mr. Ascher is inexcusable in the following respects:

1. The nature of the charges in the Alloy Piping litigation are such that Mr. Ascher must have known that the charges would seriously reflect upon his character. The committee cannot accept the suggestion that it was his best recollection that he had disclosed the lawsuit in prior documents.

2. The representation of Trust Number 1737 as a Seller, when, in fact, the Trust had no ownership, was improper.

3. Ascher's conduct in signing the Kaczmareks' signatures to various documents and in knowingly allowing Darianzo to sign the Kaczmareks' signatures in the dealings with the Frestons was improper. The Frestons were given unenforceable contracts, and they were given an invalid and unenforceable note and mortgage, and the fee title to their property was taken from them for over six (6) months without payment of the balance of the purchase price and without any enforceable documentation to protect them.

4. Similarly, Ascher's conduct with respect to Alloy Piping was improper. Again, he and Darianzo signed the Kaczmareks' names to important documents, they delivered defective title to Alloy, and the purchase price was kept in accounts subject to the control of the Aschers for six (6) months.

5. The procedures followed, particularly with respect to the Freston and Alloy deals, are unconscionable and indicate to the committee a serious defect in the character of the applicant, rendering him unfit to practice law in Illinois.

6. The committee believes that the procedures followed with respect to the "Addison Legal Service" was simply a subterfuge to permit Ascher to practice law without a license. This is a further reason for denying a license to Mr. Ascher.

It is the understanding of the committee that the burden is on the applicant to prove that he has the proper character and fitness to be admitted to practice law in Illinois. However, in reaching the decision in this case, the committee finds that the evidence is overwhelming against Ascher.

Taking all of the evidence heard by the committee, it is the opinion of the committee that the preponderance of the evidence is clearly against the applicant.

It is further the opinion of the committee that the information contained in this proceeding with reference to the conduct of Attorney John Darianzo should be made known to the Attorneys Registration and Disciplinary Commission, and the secretary of the Board of Law Examiners is hereby requested to relay this information to the Commission.

This opinion has been circulated among the members of the committee, and they have indicated to the Chariman that they are in favor of the decision and approve the opinion by a vote of 6 to 0. Any concurring or dissenting opinions will be furnished herewith.

Respectfully submitted,

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Chairman